

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Daniel J. O'Keefe,
Plaintiff,

-against-

The United States Department of Defense,
Defendant.

CV 05

2956

Civil Action,
File Number

TRAGER, J.

Freedom of
Information Act
Complaint

BLOOM, M.J.

Plaintiff, Daniel J. O'Keefe, alleges:

1. This action is brought under the Freedom of Information Act, as amended (5USCA Sec.552(a)(4)(B)), and seeks a preliminary and final injunction, enjoining the withholding of certain information from the plaintiff, and directing that the information be disclosed.

2. Plaintiff resides in Woodside, Queens County, New York. Defendant, Department of Defense, is a federal administrative agency within the meaning of the Act.

3. Venue of this action is properly laid in this court.

4. Defendant Department of Defense maintains certain records consisting generally of Inspector General ("IG") investigative documents, notes, witness statements, correspondence, and other papers, related to the

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PRO SE OFFICE

investigation, analysis and final determination of an IG complaint in which the plaintiff has an interest in, by reason of being the complainant.

5. On or about March 7, 2004, plaintiff duly requested in writing that defendant Department of Defense through the appropriate officer or employee of that agency, disclose the records mentioned above to plaintiff, and that it provide a copy of them to the plaintiff. See exhibit A. (Plaintiff's social security number has been redacted from this exhibit and will be made available to the court if requested.)

6. On or about May 27, 2004, defendant Department of Defense released eight pages containing minimal administrative information, a one page memorandum about releasing the above eight pages, and a two page letter refusing to release all other information citing exemption (b) (7) (C) of 5 USC 552 as the basis for the refusal. See exhibit B.

7. On or about July 10, 2004, plaintiff appealed this determination to the Appellate Authority, Mr. John Crane, an Assistant Inspector General of the Department of Defense. The basis of the appeal was Kilroy -vs- NLRB, SD Ohio, 633 FSupp 136, which held that once an investigative case has been closed, the enforcement proceeding is no longer pending and exemption (b) (7) (C) of 5 USC 552, no longer applies. See exhibit C.

8. On or about March 10, 2005, Mr. John Crane, the Department of Defense Appellate Authority, upheld the prior determination to deny plaintiff copies of all documents related to his IG complaint. Mr. Crane did not state any new reason for his decision. See exhibit D.

9. Plaintiff has proceeded pro-se in this action, and has incurred and will continue to incur expenses for fees and costs.

10. The records referred to, were and are identifiable records within the meaning of the Freedom of Information Act. Defendant Department of Defense's refusal to disclose the records to the plaintiff was wrongful and without lawful reason or excuse, and plaintiff is entitled to the relief provided by the Act.

Wherefore, plaintiff requests judgment for:

1. A preliminary and final injunction prohibiting defendants from withholding from plaintiff the records referred to and described above;

2. A preliminary and final injunction directing defendants to make the described records available to plaintiff and permit the inspection and copying of them;

3. Fees and costs; and

4. Such other and further relief as the court may deem proper.

June 20, 2005


Daniel J. O'Keefe

50-12 48th Street
Woodside, New York 11377
(718) 786-8068

EXHIBIT "A"

04-F-1198

50-12 48th Street
Woodside, New York 11377
March 7, 2004

Directorate for Freedom of Information and Security Review
United States Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155

Dear Sir:

I'd like to utilize the Freedom of Information Act to obtain all documents related to an IG complaint that I filed in 2002.

On August 16, 2002 I was an army reservist assigned to the United States Central Command Headquarters at MacDill Air Force Base, Florida. On that date I wrote a letter of complaint to Honorable Joseph E. Schmidz, the Inspector General of the United States Department of Defense. My SS# is [REDACTED].

At this time, I'm requesting a copy of all documents, records, notes and papers related to or used in the investigation and disposition of my complaint.

Thanks for your assistance in this matter.

Sincerely,


Daniel J. O'Keefe

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FOIA/PA OFC

EXHIBIT "B"

HOTLINE CASE CODE: 11

Case Number 85242	Status C	Origin L	Date Received 08/18/2002	Date Opened 08/30/2002	Priority RU	High Visibility	Referral A
Activity JS	Sub Activity		Allegation PER	Sub Allegation OTH	Analyst [REDACTED]		XRef N
Status Description							
Organization AFB MACDILL			Sub Organization		City		State/Country FL
Subject Name			Grade		Sub Type		
Case Description VIOLATION CONSTITUTIONAL RIGHT TO DUE PROCESS - HARASSMENT - RETALITATION							
Referred Date: 11/19/2002		Progress Date: 11/19/2002		Suspense: 02/18/2003		Supplemental : 0	Status Check: 0
ROI Recd Date 03/03/2003	ROI Def N	MOR Date	Closed Date 10/24/2003	Result NS	Remedy NRR	Days to Close 421	Case Location Record Center
Reviewer 1. [REDACTED] 2. [REDACTED] 3. [REDACTED]		Review Date 09/04/2003 10/24/2003		Audit: Follow up: N Follow up Date Close: Savings: Investigating Activity: JS Investigator: [REDACTED]			
Remarks							
<div style="display: flex; justify-content: space-between;"> <div> Name: OKEEFE, DANIEL J Address: 5108 EISENHOWER BLVD City/St/Zip: TAMPA, FL 33634 Phone (H): 8132903325 (W): Email Address: </div> <div> COMPLAINANTS Interview: Y Confidential: N Revealed To: <div style="border: 1px solid black; height: 40px; width: 100%;"></div> </div> </div>							

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HOTLINE CASE CODE R-11

Case Number 85242	Status R	Origin L	Date Received 08/18/2002	Date Opened 08/30/2002	Priority RU	Referral A
Activity JS	Sub Activity		Allegation PER	Sub Allegation OTH	Analyst [REDACTED]	XRef N
Status Description						
Organization AFB MACDILL		Sub Organization		City		State/Country FL
Subject Name			Grade	Sub Type		
Case Description VIOLATION CONSTITUTIONAL RIGHT TO DUE PROCESS - HARASSMENT - RETALITATION						
Referred Date: 11/19/2002		Progress Date: 11/19/2002		Suspense: 02/18/2003		Status Check: 0
ROI Recd Date 03/03/2003	ROI Def N	MOR Date	Closed Date	Result	Remedy	Record Center
Reviewer		Review Date	Audit: Follow up: N Follow up Date Close:			
1.			Savings:			
2.			Investigating Activity: JS			
3.			Investigator: [REDACTED]			
Remarks						
<p align="center">COMPLAINANTS</p> <div> <div> Name: OKEEFE, DANIEL J Address: 5108 EISENHOWER BLVD City/St/Zip: TAMPA, FL 33634 Phone (H): 8132903325 (W): Email Address: </div> <div> Interview: Y Confidential: N Revealed To: </div> </div>						

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HOTLINE CASE CODE

Case Number 85242	Status O	Origin L	Date Received 08/18/2002	Date Opened 08/30/2002	Priority RU	Referral A
Activity JS	Sub Activity		Allegation PER	Sub Allegation OTH	Analyst [REDACTED]	XRef N
Status Description						
Organization AFB MACDILL		Sub Organization		City	State/Country FL	
Subject Name			Grade	Sub Type		
Case Description VIOLATION CONSTITUTIONAL RIGHT TO DUE PROCESS - HARASSMENT - RETALITATION						
Referred Date: 11/19/2002		Progress Date: 11/19/2002		Suspense: 02/18/2003		Status Check: 0
ROI Recd Date	ROI Def N	MOR Date	Closed Date	Result	Remedy	Days to Close
Reviewer		Review Date	Case Location			
1.			Record Center			
2.			Follow up: N			
3.			Follow up Date Close:			
			Savings:			
			Investigating Activity:			
			Investigator:			
Remarks						
<div style="display: flex; justify-content: space-between;"> <div> Name: OKEEFE, DANIEL J Address: 5108 EISENHOWER BLVD City/St/Zip: TAMPA, FL 33634 Phone (H): 8132903325 (W): Email Address: </div> <div> <u>COMPLAINANTS</u> Interview: Y Confidential: N Revealed To: </div> </div>						
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HOTLINE CASE CODE SA 1

Case Number 85242	Status O	Origin L	Date Received 08/18/2002	Date Opened 08/30/2002	Priority RU	Referral A
Activity JS	Sub Activity		Allegation PER	Sub Allegation OTH	Analyst [REDACTED]	XRef N
Status Description						
Organization AFB MACDILL		Sub Organization		City		State/Country FL
Subject Name		Grade		Sub Type		
Case Description VIOLATION CONSTITUTIONAL RIGHT TO DUE PROCESS - HARASSMENT - RETALITATION						
Referred Date:		Progress Date:		Suspense:		Supplemental : 0
Status Check: 0						
ROI Recd Date	ROI Def N	MOR Date	Closed Date	Result	Remedy	Days to Close
Case Location		Record Center				
Reviewer		Review Date	Audit:			
1.			Follow up: N			
2.			Follow up Date Close:			
3.			Savings:			
			Investigating Activity:			
			Investigator:			
Remarks						
<div style="display: flex; justify-content: space-between;"> <div> <p>COMPLAINANTS</p> <p>Name: OKEEFE, DANIEL J</p> <p>Address: 5108 EISENHOWER BLVD</p> <p>City/St/Zip: TAMPA, FL. 33634</p> <p>Phone (H): 8132903325 (W):</p> <p>Email Address:</p> </div> <div> <p>Interview: Y</p> <p>Confidential: N</p> <p>Revealed To:</p> </div> </div>						
<p>CONFIRMATION</p> <p style="font-size: 2em; margin-top: 20px;">676</p>						

HOTLINE CASE CODE EET

Case Number 85242	Status P	Origin I	Date Received 08/18/2002	Date opened 08/30/2002	Priority RU	Referral A
Activity HTLN	Sub Activity		Allegation	Sub Allegation	Analyst	XRef
Status Description						
Organization HOTLINE		Sub Organization		City	State/Country	
Subject Name			Grade	Sub Type		
Case Description FORCED TO SIGN A DOCUMENT AGAINST MY WILL, DENIED MY RIGHT TO DUE PROCESS						
Referred Date:		Progress Date:		Suspense:		Supplemental: 0
Status Check: 0						
ROI Recd Date	ROI Def N	MOR Date	Closed Date	Result	Remedy	Days to Close
Case Location		Record Center				
Reviewer		Review Date	Audit:			
1.			Follow up: N			
2.			Follow up Date Close:			
3.			Savings:			
			Investigating Activity:			
			Investigator:			
Remarks						
<div style="display: flex; justify-content: space-between;"> <div> <p>COMPLAINANTS</p> <p>Name: OKEEFE, DANIEL J</p> <p>Address: 5108 EISENHOWER BLVD</p> <p>City/State/Zip: TAMPA, FL 33634</p> <p>Phone (H): 8132903325 (W):</p> <p>Email Address:</p> </div> <div> <p>Interview:</p> <p>Confidential:</p> <p>Revealed To:</p> </div> </div>						

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DOD HOTLINE
QUALITY ASSURANCE REVIEW OF COMPLETION REPORTS

CASE NUMBER 85242

Pending/Response Date _____

TIMELINESS

Date sent to activity: _____

Date completion report received at Hotline: _____

Total number of days to complete: _____

INDEPENDENCE

Was Reviewer/Investigator independent of the allegation? _____
 (Yes or No) If no, explain below. YES

ADEQUACY

Summarize overall adequacy of review/investigation (Yes or No). Were the allegations answered? Were the appropriate individuals interviewed? Were the appropriate records reviewed?

REVIEW I YES - Close

REVIEW II

yes / closeRESULTS INS / NRRRESULTS IINS / NRRFINAL

Close Date: 10-24-03
 Result: NSR
 Remedy: NRR
 Benefit:
 Dollar:
 Audit Flag:
 Supervisor: 67C
6

Date 09-04-03Date 10-24-03

Initials

DEPARTMENT OF DEFENSE HOTLINE
ACTION CASE REFERRAL

Tracking and response to the Defense Hotline is required in accordance with DoD Directive 7050.1,
January 4, 1999, Subject: Defense Hotline.

REFERRED FOR ACTION TO: JOINT STAFF INSPECTOR GENERAL

HOTLINE CASE NUMBER: 85242

REFERRED DATE: NOV 19 2002 SUSPENSE DATE: FEB 19 2003

Hotline Database Search

Date Complaint Received: 8-18-02

Search Date: 8-29-02

Name/Company

Search Result(s)

O'Keefe Daniel

No

If the search does not come up with a match the new case number is 85242

Investigator _____



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

MAY 27 2004

OCCL

**MEMORANDUM FOR OFFICE OF FREEDOM OF INFORMATION AND
SECURITY REVIEW**

**SUBJECT: Freedom of Information Act Request Referral
Mr. Daniel J. O'Keefe, FOIA No. 04-0202**

This memorandum refers to the subject request (Attachment 1). While processing this request, we identified your information, consisting of eight pages, in our files (Attachment 2). The information is referred for your review, release determination and direct response to Mr. Daniel J. O'Keefe. A copy of our response to the requester is at Attachment 3. Please furnish this office with a copy of your final response to the requester.

If you have any questions, please contact my action officer, Ms. Barbara Davis-Flanagan, at 703-604-9779.

A handwritten signature in dark ink, appearing to read "D. R. Aaron", is positioned above the typed name.

Darryl R. Aaron
Chief

Freedom of Information Act/
Privacy Act Office

Attachments

ENCLOSURE(/)



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

MAY 27 2004

OCCL

Mr. Daniel J. O'Keefe
50-12 48th Street
Woodside, NY 11377

Dear Mr. O'Keefe:

This letter is in response to your Freedom of Information Act (FOIA) request dated March 7, 2004, to the Directorate for Freedom of Information and Security Review (DFOISR). On April 1, 2004, the DFOISR referred your request to this office for our action and direct response to you, for all documents related to an IG complaint that you filed in 2002.

We identified Defense Hotline case 85242 as being responsive to your request. The Defense Hotline referred this case to the Joint Staff for investigation. The Department of Defense FOIA referral policy requires that the document originator make the release determination and a direct response to the requester. I have, therefore, referred your request and documents, consisting of eight pages to the Washington Headquarters Services, Directorate for Executive Services and Communications, Office of Freedom of Information and Security Review, 1155 Defense Pentagon, Room 2C757, Washington, DC 20301-1155 (Enclosure 1). That office will provide you with appeal procedures for any information that they withhold from you.

I have carefully reviewed the administrative documents contained in case 85242 and determined that the enclosed documents, that were originated within the Office of the Inspector General of the Department of Defense may be released to you, with redactions. Information redacted from this case (Enclosure 2) is withheld as authorized by the FOIA, 5 U.S.C. §552 under exemption (b)(7)(C), the release of information from a law enforcement record could reasonably be expected to constitute an unwarranted invasion of personal privacy of individuals. It also is used to protect the identity of government law enforcement personnel named in the files.


You have the right to appeal any information withheld from you in response to your request by writing to the Appellate Authority:

John R. Crane
Assistant Inspector General
Office of Communications and Congressional Liaison
400 Army Navy Drive, Room 752
Arlington, Virginia 22202-4704

To be considered your appeal should be postmarked no later than 60 calendar days from the date of this letter. State your reasons for the appeal, have "Freedom of Information Act Appeal" clearly printed on the envelope and the letter, cite FOIA request number 04-0202, and include a copy of this letter.

I am the official responsible for this determination and have waived all processing fees. If you have any questions, please contact my action officer, Ms. Barbara Davis-Flanagan at (703)-604-9779.

Sincerely,

A handwritten signature in black ink, appearing to read "Darryl R. Aaron".

Darryl R. Aaron
Chief
Freedom of Information Act/
Privacy Act Office

Enclosures

EXHIBIT "C"

50-12 48th Street
Woodside, New York 11377
July 10, 2004

Mr. John R. Crane
Assistant Inspector General
Office of Communications and Congressional Liaison
400 Army Navy Drive, Room 752
Arlington, Virginia 22202-4704
USPS CERTIFIED RR 7001 1140 0002 2290 6724

Dear Mr. Crane:

I am writing to appeal a determination by Mr. Darryl R. Aaron to deny my Freedom of Information Act request for the contents of an IG complaint file. I was the complainant in the case.

Mr. Darryl R. Aaron, Chief, FOIA/Privacy Act Office, in a letter dated May 27, 2004 (attached) has exercised exemption (b)(7)(C) of 5 USC 552, to deny my FOIA request dated March 7, 2004 (attached).

On March 21, 2003, Colonel Georgette T. Hassler, Deputy Inspector General, United States Central Command, who was the investigating officer for my complaint at MacDill Air Force Base mailed the investigation results to my home of record. In her letter, which is also attached, she indicates that the case is closed.

Please be advised that the Federal Courts have held that once an investigative case has been closed, the enforcement proceeding is no longer pending and exemption (b)(7)(C) of 5 USC 552, no longer applies (see Kilroy -vs- NLRB, SD Ohio, 633 FSupp 136). With this in mind, I'm now requesting that you overrule Mr. Aaron's determination and direct the release of the entire contents of the file to me.

I would also like to clear up some possible confusion on the governments' part at this time. First, Mr. Aarons' letter indicates that he referred my request to the Washington Headquarters Service, Directorate for Executive Services and Communications, Office of Freedom of Information and Security Review. He further states, "That

office will provide you with appeal procedures for any information that they withhold from you". Secondly, Mr. Aaron states that he reviewed the "administrative" documents contained in case 85242 and in denying my request, he directs me to send my appeal to you. Finally, on June 25, 2004, I received a letter (attached) from Ms. Jacqueline J. Scott, FOIA Officer at MacDill Air Force Base. She indicates that it will take considerable time to complete my FOIA request. Obviously, her letter contradicts Mr. Aaron's letter of denial.

Mr. Crane, I've served a number of years in the military and I'm currently in the New York State Civil Service (Court Clerk - NYS Supreme Court). I'm well aware that oftentimes in government the right hand doesn't know what the left hand is doing and that occasionally, people may use poor judgment in dealing with situations. The fact that I've made a single FOIA request to the DOD and now I'm being directed to follow up with three different offices could be the result of a misunderstanding or just an innocent mistake. On the other hand, and this is certainly not an accusation, but perhaps someone may be deliberately trying to trip me up in an attempt to deprive me of my statutory rights. There is no way in the world that any misguided individual is going to derail me from uncovering the truth of my IG investigation. Since my request was officially denied and you are the appellate authority in this matter, I will deal exclusively with you. I'm asking that you do your job, comply with the law and release of the entire contents of the file to me.

Should you decline my request I will file an action in US District Court in Brooklyn, New York, to compel your compliance. I will also ask for costs and sanctions.

Thanks for your consideration in this matter.

Sincerely,

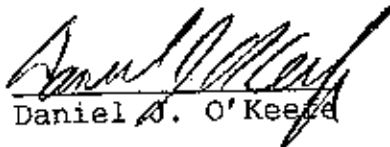

Daniel J. O'Keefe

EXHIBIT "D"



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

MAR 10 2005

Mr. Daniel J. O'Keefe
50-12 48th Street
Woodside, NY 11377

Dear Mr. O'Keefe:

This letter is in response to your Freedom of Information Act (FOIA) appeal letter of July 10, 2004. You are appealing the decision of Mr. Darryl R. Aaron, the Initial Denial Authority (IDA) to partially deny your FOIA request (04-0202), for, "the contents of an IG complaint file."

On May 27, 2004, the IDA provided you with a copy of all the releasable portions of Defense Hotline case number 85242 that originated within the Office of the Inspector General of the Department of Defense. We withheld the identities of individuals and government law enforcement personnel named in the file as release could reasonably be expected to constitute an unwarranted invasion of their personal privacy under FOIA exemption (b)(7)(C).

I have carefully reviewed your appeal and determined that the actions taken by the IDA were appropriate. This letter constitutes my final decision on your request. As the Appellate Authority, I am the official responsible for this determination. You may seek judicial review of this decision in federal court.

Sincerely,


John R. Crane
Freedom of Information Act
Appellate Authority

